

## Message Text

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ACTION L-02

INFO OCT-01 EA-06 ISO-00 JUSE-00 SCA-01 PM-03 SS-15 SP-02

CIAE-00 INR-07 NSAE-00 PRS-01 /038 W

----- 107765

P R 111139Z FEB 75

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC PRIORITY 693

INFO CSAF WASHDC/JACI

CINCPACAF/JA HICKAM AFB HI

13AF CLARK AB PI/JA

13AF ADVON/CC

388 CMBT SPT GP/JA KORAT RTAFB

LIMITED OFFICIAL USE SECTION 1 OF 2 BANGKOK 2435

STATE PLEASE PASS JUSTICE, ATTENTION: CIVIL DIVISION

STATE FOR OFFICE OF LEGAL ADVISER

E.O. 11652: N/A

TAGS: MILI, TH

SUBJECT: CIVIL LITIGATION: S. LENG VS KORAT A.B. NCO OPEN MESS,  
ET AL.

1. THE RTG MINISTRY OF FOREIGN AFFAIRS (MFA) FORWARDED THE SUMMONS, COMPLAINT, REQUEST FOR WRIT OF ATTACHMNT AND ALLIED SUPPORTING PAPERS IN THE SUBJECT LITIGATION BY NOTE DATED 30 DECEMBER 1974 AND REQUESTED THAT THE NAMED DEFENDANTS BE ASKED TO RECEIPT FOR THE SAME AND THAT THE EXECUTED RECEIPTS BE RETURNED. COPIES OF THE PAPERS IN THE SUIT HAVE ALREADY BEEN FURNISHED TO CSAF/JACI, AND THEREFORE ADDITIONAL COPIES WILL NOT BE FORWARDED UNLESS SPECIFICALLY REQUESTED.

2. BY AN ADDITIONAL NOTE DATED 29 JANUARY 1975, MFA FORWARDED SUMMONS FROM THE COURT FOR THE PRESENCE OF THE DEFENDANTS ON 14 FEBRUARY 1975 FOR A HEARING ON  
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THE PLAINTIFF'S PETITION TO PROCEED IN FORMA PAUPERIS.

COPIES OF THESE DOCUMENTS WILL BE POUCHED.

3. A COMPLETE REPORT ON THE BASIC LITIGATION HAS BEEN MADE TO CSAF/JACI AND, IN TURN, TO THE DEPARTMENT OF JUSTICE. RECOMMEND THAT COPIES THEREOF BE OBTAINED.

4. S. LENG, DOING BUSINESS AS WATANA SILP UBOL, ENTERED INTO A REQUIREMENTS CONTRACT WITH THE KORAT NCO OPEN MESS, HEREINAFTER REFERRED TO AS CLUB, ON 1 MAY 1974 FOR A TERM OF ONE YEAR TO PROVIDE THE CLUB WITH THE FRESH PRODUCE THAT IT NEEDED. THE CONTRACT WOULD BE RENEWED FOR TWO ADDITIONAL ONE YEAR TERMS BY THE CLUB IF IT DID NOT NOTIFY LENG IN WRITING THIRTY DAYS PRIOR TO THE EXPIRATION OF A TERM THAT IT DID NOT INTEND TO EXERCISE ITS OPTION. THE CONTRACT FURTHER PROVIDED THAT IT WOULD TERMINATE AUTOMATICALLY UPON THE DISSOLUTION OF THE CLUB AND THAT IT COULD BE QUOTE DECLARED VOID END QUOTE BY THE CLUB IF QUOTE IT HAS BEEN ESTABLISHED TO THE SATISFACTION OF THE COMMANDER, 388TH COMBAT SUPPORT GROUP, THAT THE VENDOR AND ONE OR MORE AGENTS OF THE NCO OPEN MESS HAVE ENGAGED IN THE GIVING AND RECEIVING OF ANY KICKBACK OR OTHER UN-AUTHORIZED EXCHANGE OF FAVORS END QUOTE. THE CONTRACT DID NOT SPECIFY WHAT LAW WOULD BE CONTROLLING IN THE INTERPRETATION OF ITS TERMS.

5. DURING THE AFOSI INVESTIGATION OF OPEN MESS IRREGULARITIES IN THAILAND, S. LENG WAS IMPLICATED AS HAVING PROVIDED GIFTS TO OPEN MESS PERSONNEL AT INSTALLATIONS OTHER THAN KORAT. ADDITIONALLY, HE EXPRESSLY ADMITTED HAVING MADE A PERSONAL LOAN TO THE THAI MANAGER OF THE KORAT CLUB. BASED UPON THIS, THE CLUB DECIDED WITH THE CONCURRENCE OF THE 388TH COMBAT SUPPORT GROUP COMMANDER TO TERMINATE THE CONTRACT. AN UNDATED LETTER OF TERMINATION SIGNED BY SSGT. TOMMY E. WILLIAMSON THE, CLUB CUSTODIAN, WAS FORWARDED TO LENG. HE ADMITTED RECEIVING IT ON 20 SEPT 1974. THE LETTER INDICATED THAT THE CONTRACT WAS BEING TERMINATED "AS BEING IN THE BEST INTERESTS OF THE KORAT NCO OPEN MESS." THE LETTER FURTHER ADVISED LENG THAT IF HE HAD ANY SUBCONTRACTS THEY WERE HIS RESPONSIBILITY AND THAT ANY QUESTIONS REGARDING THE TERMINATION SHOULD BE LIMITED OFFICIAL USE

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BROUGHT TO THE ATTENTION OF THE KORAT RTAFB CHIEF OF PROCUREMENT. THE CLUB, NEVERTHELESS, CONTINUED TO ORDER UNDER THE CONTRACT UNTIL 1 OCTOBER 1974 WHEN DELIVERY OF AN ORDER WAS REFUSED.

6. S. LENG FILED HIS SUIT IN THE NAKORN RATCHASIMA COURT (KORAT PROVINCIAL COURT), PENDING CASE NO. 652/2517, IN THE BEGINNING OF NOVEMBER 1974. IN IT HE IS SUING

COL. KENNETH H. GALLAGHER (FORMER COMMANDER, 388TH COMBAT SPT GROUP), SSGT. TOMMY E. WILLIAMSON (THE CLUB CUSTODIAN), THE KORAT NCO OPEN MESS, AND CMSGT. DONALD G. GOW (THE FORMER CLUB CUSTODIAN). SERVICE WAS ATTEMPTED ON THE NAMED DEFENDANTS ON 8 NOV 1974, BUT WAS ACCEPTED BY THE 388TH CBT SPT GP SJA EXCEPT FOR CMSGT. GOW WHO HAD ALREADY BEEN REASSIGNED FROM KORAT. ON 14 NOVEMBER THE SJA, UNDER DAF INSTRUCTIONS, RETURNED THE PROCESS TO THE COURT BY LETTER. IN THE LETTER IT WAS ALLEGED THAT THE US WAS THE PROPER PARTY IN INTEREST AND THAT APPROPRIATE SERVICE SHOULD BE MADE THROUGH MFA ON THE US EMBASSY. THE COURT WAS FURTHER ADVISED THAT THE CLUB WAS WILLING TO ATTEMPT SETTLING THE MATTER WITH MR. LENG. THE COURT ACCEPTED THE PLEADINGS AND HELD ALL PROCEEDINGS IN ABEYANCE TO ALLOW THE PARTIES TO WORK OUT THE DISPUTE.

7. MR. LENG REQUESTED DAMAGES IN THE AMOUNT OF 1,878,750 BAHT (APPROXIMATELY \$93,937.50). THIS CONSISTS OF 1,055,000 BAHT IN LIQUIDATED DAMAGES (5,000 BAHT PER DAY XR 211 DAYS) ON A SUBCONTRACT HE HAD TO TERMINATE; 280,000 BAHT FOR LOSS OF PROFITS (40,000 BAHT PER MONTH FOR SEVEN MONTHS); 500,000 BAHT FOR LOSS OF GOODWILL AND REPUTATION; AND 43,750 BAHT FOR SALARIES DUE SOME SEVEN EMPLOYEES FOR REMAINDER OF THE CONTRACT. DURING SETTLEMENT NEGOTIATIONS, LENG REDUCED HIS DEMAND TO 4/7 OF THE TOTAL (APPROXIMATELY 1,033,464 BAHT) BUT REFUSED TO SUBSTANTIATE ANY OF THE ITEMS EXCEPT TO PRODUCE A COPY OF HIS SUBCONTRACT. THE CLUB OFFERED 100,000 BAHT (ABOUT \$5,000). LENG WAS REQUESTED TO MAKE A FURTHER COUNTER OFFER BUT HE REFUSED. THE COURT WAS ADVISED OF THIS IMPASSE AROUND 13 DECEMBER AT WHICH TIME AN ORDER WAS ENTERED DIRECTING PROPER SERVICE UPON THE EMBASSY.

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TO SECSTATE WASHDC PRIORITY 694

INFO CSAF WASHDC/JACI  
CINCPACAF/JA HICKAM AFB HI  
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STATE PLEASE PASS JUSTICE, ATTENTION: CIVIL DIVISION

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8. SINCE SERVICE HAS YET TO HAVE BEEN EFFECTED UPON THE  
NAMED DEFENDANTS A DEFAULT WOULD PROBABLY NOT BE ENTERED  
BECAUSE OF NON-APPEARANCE AT THE 14 FEB 1975 HEARING.  
NEVERTHELESS IT WOULD BE PRUDENT TO HAVE A REPRESENTATIVE  
PRESENT AT THE COURT NDBGYAKDQ  
FGYPHZWPARTTKFIBZGLISLHN  
THAT RESPECT, THE DEPARTMENT OF JUSTICE HAS ALREADY  
AUTHORIZED THE AIR FORCE TO RETAIN A LOCAL KORAT ATTORNEY,  
MR. CHUMLONG RATTANAKANOKE, TO REPRESENT ITS INTERESTS IN  
THE PRIOR PROCEEDINGS. IN VIEW OF HIS FAMILIARITY WITH  
THE CASE AS WELL AS HIS ABILITY, RECOMMEND THAT HIS  
RETENTION BE CONTINUED AT THE SAME RATE OF COMPENSATION AS  
BEFORE. ADDITIONALLY, RECOMMEND THAT HE BE DIRECTED TO  
BE PRESENT IN COURT ON FEBRUARY 14TH AS A REPRESENTATIVE  
OF THE UNITED STATES, SPECIFICALLY NOT THE NAMED  
DEFENDANTS, ADVISE THE COURT OF HIS POSITION AND REQUEST  
A DELAY IN THE HEARING SO THAT HE CAN OBTAIN REQUESTED  
INSTRUCTIONS FROM WASHINGTON. AT THE SAME TIME WE  
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PROPOSE TO FORMALLY ADVISE MFA OF OUR RECEIPT OF THEIR  
NOTES, THE FACT THAT WE HAVE QUERIED WASHINGTON FOR  
INSTRUCTIONS, AND REQUEST THEIR INTERCESSION WITH THE  
COULXKNGUKGCHFWH  
RFB.

RAWDTEXHB W

VGOSE INSTRUCTIONS.

MFA WILL BE FURTHER ADVISED THAT TWO OF THE NAMED  
DEFENDANTS ARE NO LONGER IN COUNTRY BUT THAT SHOULD NOT  
AFFECT THE SUIT SINCE THE INDIVIDUALS WERE AT ALL TIMES  
ACTING OFFICIALLY AND THAT THE CAUSE OF ACTION, IF ANY,  
LIES AGAINST THE KORAT CLUB, AN INSTRUMENTALITY OF  
THE UNITED STATES.

9. TWO PRIOR CASES IN THAILAND HAVE SOME BEARING ON  
THE CURRENT CASE: MISS SAFIPAN PREEYAWONG VS. LT. COL.  
HAROLD L. COOP IN HIS OWN NAME AND IN THE NAME OF THE

CHIEF OF THE JOINT LIAISON OFFICE ETC. (CASE NUMBERS  
BLACK 257/2516, RED 187/2517, CHON BURI PROVINCIAL COURT)  
AND WE FIXIT COMPANION ENTERPRISE CO. LTD. VS. MR. JOHN C.  
THOMPSON AND THE US ARMY PROCUREMENT OFFICE BY MR. JOHN C  
THOMPSON (CASE NUMBER 6274/1970, BANGKOK CIVIL COURT.)  
IN THE LATTER CASE FOR BREACH OF CONTRACT THE US  
ARGUED THAT THE SUIT WAS IN EFFECT AGAINST THE US SINCE  
THOMPSON HAD AT ALL TIMES BEEN IN THE PERFORMANCE OF  
OFFICIAL DUTY AND THAT SINCE THE US AS A SOVEREIGN WAS  
IMMUNE FROM SUIT, THE CASE SHOULD BE DISMISSED. THE  
COURT AVOIDED THE QUESTION OF SOVEREIGN IMMUNITY BY  
DECIDING THAT THE PROCUREMENT OFFICE WAS NOT A JURISTIC  
PERSON SUBJECT TO THAI JURISDICTION. IT DID, HOWEVER,  
HOLD THAT THOMPSON WAS AN AGENT FOR A FOREIGN PRINCIPAL  
AND WAS SUBJECT TO JURISDICTION AND PERSONAL LIABILITY.  
THE SUIT WAS EVENTUALLY DISMISSED ON OTHER GROUNDS.  
IN THE COOP CASE, AN ACTION FOR DAMAGE BY A MOTEL OWNER  
FOR THE CANCELLATION OF A LEASE OF THE MOTEL BY THE  
JOINT LIAISON OFFICE OF THE LOGISTICS AND TRAINING  
COMMAND TO HOUSE KHMER STUDENTS IN THAILAND, THE  
PLAINTIFF SOUGHT TO PROCEED IN FORMA PAUPERIS. THE  
US ARGUED AGAINST THAT ACTION, AND THE SUIT, WHEN THE  
PLAINTIFF REPEATEDLY FAILED TO APPEAR TO SUBSTANTIATE  
HER RIGHT TO PROCEED IN FORMA PAUPERIS, WAS DISMISSED.  
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FULL REPORTS ON BOTH CASES SHOULD BE IN THE POSSESSION  
OF THE INTERNATIONAL LAW DIVISION, OFFICE OF THE JUDGE  
ADVOCATE GENERAL, DEPARTMENT OF THE ARMY.

10. THE SUBJECT LITIGATION, UNFORTUNATELY, CANNOT  
BE CONSIDERED IN ISOLATION. SUITS HAVE BEEN INITIATED  
AGAINST OFFICER OPEN MESS OFFICIALS IN BANGKOK FOR THEIR  
ALLEGED UNAUTHORIZED TERMINATION OF TWO ENTERTAINMENT  
CONTRACTS. ADDITIONALLY THERE HAS BEEN AN INDICATION  
THAT OTHER US MILITARY PERSONNEL MAY BE PERSONALLY SUED IN  
THE VERY NEAR FUTURE FOR ACTIONS DONE IN THE PERFORMANCE  
OF OFFICIAL DUTY. CONSEQUENTLY, THE ACTION TAKEN IN THE  
LENG CASE HAS THE POTENTIAL FOR QUICK RAMIFICATIONS. UN-  
FORTUNATELY, ON THE MERITS THE US POSITION IS NOT STRONG.  
THE REPORTED INCIDENTS UPON WHICH THE TERMINATION WAS  
PREMISED MAY NOT UNDER THAI LAW CONSTITUTE ADEQUATE  
GROUNDS. THE US POSITION  
HAS BEEN WEAKENED BY THE FACT  
THAT A SIMILAR CONTRACT HELD BY THE PLAINTIFF AT UDORN  
RTAFB WAS NOT ONLY NOT TERMINATED BUT WAS IN FACT EXTENDED.  
CONSEQUENTLY IT WOULD SEEM TO BE IN THE BEST INTEREST OF  
THE US TO SETTLE THIS DISPUTE. THE SO FAR INTRANSIGENT  
ATTITUDE OF THE PLAINTIFF, HOWEVER, HAS COMPLICATED AND  
FRUSTRATED EVERY SINCERE SETTLEMENT EFFORT. IN THIS

RESPECT THE PLAINTIFF HAS WRITTEN TO THE PRESIDENT, THE  
AMBASSADOR, COMUSMACHTAI, AND SUPREME COMMAND HEADQUARTERS  
IN AN ATTEMPT TO OBTAIN A SETTLEMENT UPON HIS TERMS. IT  
WOULD THEREFORE APPEAR APPROPRIATE TO DELAY AND DRAG OUT THE  
LITIGATION AS LONG AS POSSIBLE TO OVERCOME THIS INTRANSIGENCE  
AND CONVINCE THE PLAINTIFF THAT HIS BEST RECOURSE IS TO  
SIT DOWN AND HONESTLY NEGOTIATE A SETTLEMENT. THIS COULD  
RESULT FROM HIS SEEING THAT HIS ATTEMPTS AT EXERTING  
POLITICAL PRESSURE FAIL AND THAT HIS RESORT TO THE COURTS  
WILL NOT OBTAIN SPEEDY RELIEF. AS TO THE LATTER IT IS  
RECOMMENDED THAT EACH STEP IN THE LITIGATION BE CONTESTED.  
IN THE PRESENT PROCEEDINGS, A LISTING OF LENG'S OTHER CURRENT  
AND RECENT PAST CONTRACTS WITH US MILITARY ESTABLISHMENTS  
WOULD MAKE HIS TASK DIFFICULT. IF HE FAILS IN HIS ATTEMPT  
TO PROCEED IN FORMA PAUPERIS, HE WILL BE REQUIRED TO  
POST A BOND EQUAL TO 2 1/2 PERCENT OF THE AMOUNT BEING SUED LTPYHUUEM  
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QC  
FLBJD MRPZNH394FEITURE IN THE EVENT  
THE PLAINTIFF IS UNSUCCESSFUL IN THE SUIT WHICH EVENTUALLY  
LED TO THE DISMISSAL OF THE COOP SUIT. AT THE SAME TIME  
THE MERITS ARE CONTESTED, THE ARGUMENT SHOULD ALSO BE  
MADE THAT THE SUIT IS IN EFFECT AGAINST AN INSTRUMENTALITY  
OF THE US GOVERNMENT WHICH IS NOT RECOGNIZED AS A JURISTIC  
PERSON IN THAILAND. IT SHOULD IN EFFECT BE MADE CLEAR TO  
LENG THAT LITIGATION IS NOT A GUARANTEED SOLUTION. WHILE  
THIS IS GOING ON, SETTLEMENT NEGOTIATIONS SHOULD BE  
REINITIATED WITH THE HOPE OF REACHING A REASONABLE  
MUTUALLY SATISFACTORY SOLUTION.

11. ACTION REQUESTED: AUTHORIZATION TO CONTINUE EMPLOYMENT  
OF MR. CHUMLONG RATTANAKANOE, PERMISSION TO HAVE CHUMLONG  
APPEAR AT KORAT PROVINCIAL COURT ON 14 FEGTSLXAPRUEC KCSTWVRJKDMYE  
EXH  
VTYB  
SGY PENDING RECEIPT OF INSTRUCTIONS  
FROM WASHINGTON; AND PERMISSION TO PROCEED ALONG LINES  
SET FORTH IN PARAGRAPH 10 ABOVE.  
KINTNER

NOTE BY OC/T: BANGKOK 2435 SEC 2/2 GARBLED TEXT PARAS 8, 9 &10  
AS RECEIVED, CORRECTION TO FOLLOW

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## Message Attributes

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**To:** STATE  
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